

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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NEW ENGLAND CARPENTERS HEALTH )  
BENEFITS FUND, PIRELLI ARMSTRONG )  
RETIREE MEDICAL BENEFITS TRUST; )  
TEAMSTERS HEALTH & WELFARE FUND )  
OF PHILADELPHIA AND VICINITY; )  
PHILADELPHIA FEDERATION OF )  
TEACHERS HEALTH AND WELFARE )  
FUND; DISTRICT COUNCIL 37, AFSCME - )  
HEALTH & SECURITY PLAN; JUNE )  
SWAN; BERNARD GORTER, SHELLY )  
CAMPBELL and CONSTANCE JORDAN )

Plaintiffs, )

v. )

FIRST DATABANK, INC., a Missouri )  
corporation; and McKESSON )  
CORPORATION, a Delaware corporation, )

Defendants. )

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C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' MOTION FOR THE SETTING  
OF A SCHEDULE FOR THE U&C CLAIMS**

## **I. INTRODUCTION**

The Court granted Plaintiffs' motion to add the U&C claims (cash payors) to the operative complaint on November 2, 2007 and at a status conference ordered the parties to confer on a schedule. The parties have been unable to agree on a schedule.

The parties have taken extensive discovery on the facts underlying the McKesson-FDB Scheme in the TPP and co-insurance consumer case. Discovery in that case is now closed. Plaintiffs believe that the only area that warrants further discovery relates to the relationship between AWP and the setting of the price paid by cash customers.

## **II. PLAINTIFFS' PROPOSED SCHEDULE**

### **A. McKesson Response to the Amended Complaint by January 12, 2008**

### **B. Schedule for Class Certification**

- Plaintiffs' Motion Filed April 13, 2008
- McKesson Opposition May 14, 2008
- Plaintiffs' Reply June 30, 2008

Plaintiffs have set the date for their opening brief at a date far enough out so that they can utilize any relevant discovery. The fact discovery period would remain open until Plaintiffs' reply on class certification is due so that Plaintiffs can respond to points raised in McKesson's opposition.

Plaintiffs do not believe McKesson should be automatically entitled to a surreply. Plaintiffs bear the burden on this motion and should have the last word in support. McKesson disagrees. Plaintiffs submit that past practice of allowing surreplies has only resulted in the parties submitting never-ending dueling documents resulting in the kind of "cat fights" the Court wishes to avoid.

**C. Expert Disclosures**

1. Plaintiffs to serve by June 14, 2008
2. McKesson to serve by July 16, 2008
3. Plaintiffs' Reply August 16, 2008

**D. Close of Fact Discovery – June 15, 2008**

This date will allow for follow-up discovery in response to each side's class certification papers.

**E. Trial Date – December 4, 2008**

**F. Limitations on the Use of Discovery**

Discovery in the non-U&C case is closed. Plaintiffs believe that McKesson should not be permitted to take discovery on the U&C claim to bolster or alter the available facts in the non-U&C part of the case. Without such a limitation there could be a constant submission of new facts even as the parties go to trial on these claims (in May or June of 2008). Accordingly, the Court should rule that such discovery cannot be used on the non-U&C claims.

DATED: December 11, 2007

By /s/ Steve W. Berman

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**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with counsel for McKesson regarding this motion and the parties can not come to an agreement as to a proposed schedule.

/s/ Steve W. Berman  
Steve W. Berman

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on December 11, 2007.

/s/ Steve W. Berman  
Steve W. Berman